



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE
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Regional Director

**VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
Smith-Midland Corporation
FOR
VPDES Permit No. VA0084298
AND
VPDES General Permit Registration No. VAG110298**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the Virginia Department of Environmental Quality and Smith Midland-Corporation for the purpose of resolving certain violations of the State Water Control Law, Regulations, and VPDES Permit No. VA0084298 and VPDES Concrete General Permit Registration No. VAG110298.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the terms in this Consent Order have the meanings assigned to them in Va. Code § 62.1-44.2 *et seq.*, the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation at 9 VAC 25-31-10 *et seq.*, and the VPDES General Permit for Concrete Products Facilities at 9 VAC 25-193-10 *et seq.*

SECTION C: Findings of Fact and Conclusions of Law

1. Smith-Midland Corporation is a business entity authorized to do business in Virginia and references to Smith-Midland Corporation include its affiliates, partners, and subsidiaries. Smith-Midland Corporation is a "person" within the meaning of Va. Code § 62.1-44.3.
2. Smith-Midland Corporation is the owner and operator of the Smith-Midland Corporation facility located at 5119 Catlett Road, Midland, Virginia 22728 (Facility).

3. On December 15, 2016, Smith-Midland Corporation was issued VPDES Permit No. VA0084298 under the State Water Control Law and Regulations with an effective coverage date of January 1, 2017, and an expiration of December 31, 2021 (Individual Permit). On August 3, 2021, Smith-Midland Corporation submitted an application requesting reissuance of the Individual Permit, and from January 1, 2022, through January 31, 2023, the Individual Permit was administratively continued by DEQ.
4. The Individual Permit allows Smith-Midland to discharge treated municipal wastewater from Outfall 001 and treated industrial process wastewater from the onsite concrete acid washing process from Outfall 002 to Licking Run in strict compliance with the terms and conditions of the Individual Permit.
5. On September 28, 2018, Smith-Midland Corporation submitted a registration statement requesting coverage under VPDES General Permit VAG11 for Concrete Products Facilities. On December 27, 2018, Smith-Midland Corporation was issued coverage under VPDES General Permit VAG11 for Concrete Products Facilities, under Permit Registration No. VAG110298, under the State Water Control Law and Regulations with an effective coverage date of January 1, 2019, and an expiration of December 31, 2023 (Concrete Permit).
6. The Concrete Permit allows Smith Midland Corporation to discharge stormwater associated with industrial activity from the Facility's stormwater outfalls (Outfalls 001, 002, 003, 004, 005, and 006) to Licking Run and unnamed tributaries to Licking Run in strict compliance with the terms and conditions of the Concrete Permit.
7. Licking Run and the unnamed tributaries of Licking Run that receives discharges from the Facility are located in the Potomac River Basin. The unnamed tributaries to Licking run have not been monitored or assessed by DEQ. For the receiving segment of Licking Run no data exists for the 2022 assessment period. Assessments carried forward from the 2020 assessment period include the following: (1) the wildlife and fish consumption uses were not assessed; (2) the aquatic life use is considered fully supporting based on conventional parameter data; and (3) the recreation use is assessed as impaired based on *E. coli* data, and this impairment is included in the Cedar Run and Licking Run bacteria Total Maximum Daily Load (TMDL) for the Licking Run watershed. Approximately five miles downstream from the Smith-Midland facility, Cedar Run is impaired for the aquatic life use due to benthic macroinvertebrates bioassessment. No TMDL has been completed for this impairment.
8. In submitting its December 2022 DMR for Outfall 001 as required by the Individual Permit, Smith-Midland Corporation reported an "X" to denote that it did not monitor for the following parameters: monthly concentration and loading average limits and weekly concentration and loading average maximum limits for BOD5 and TSS and the monthly concentration average and weekly concentration average maximum limits for Ammonia as N.

9. Part I.A.1.a of the Individual Permit requires that discharges from the Facility be limited and monitored by the permittee as specified for the parameters listed in the Individual Permit. The listed parameters include monthly concentration and loading average limits and weekly concentration and loading average maximum limits for BOD₅ and TSS and the monthly concentration average and weekly concentration average maximum limits for Ammonia as N.
10. In submitting its January DMR as required by the Individual Permit, Smith-Midland Corporation reported the following monitoring data for discharges from Outfall 001 of the Plant in comparison to the effluent limitations for discharges from the Facility listed in Part I.A.1.a of the Individual Permit:
 - a. Reported a COB₅ weekly concentration average maximum of 62 mg/L, compared to a permitted limit of 38 mg/L.
 - b. Reported a COB₅ monthly concentration average of 38 mg/L, compared to a permitted limit of 25 mg/L.
 - c. Reported a COB₅ weekly loading average maximum of 0.22 kg/day, compared to a permitted limit of 0.21 kg/day.
11. Annual stormwater Discharge Monitoring Reports (DMRs) for 2021 for Outfalls 001, 002, 003, 004, 005, and 006 were not received by DEQ by the permitted due date of January 10, 2022. Smith-Midland Corporation submitted DMRs to DEQ on March 16, 2022, reporting that no stormwater monitoring was performed for 2021 from the Facility's industrial stormwater Outfalls.
12. Part I.A.2 of the Concrete Permit requires Smith-Midland Corporation to monitor the discharge of stormwater associated with industrial activity from Outfalls 001, 002, 003, 004, 005, and 006 for flow (volume), Total Suspended Solids, and pH a minimum of once per year, and Part III.C.1 of the Concrete Permit states: "The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office."
13. Smith-Midland Corporation failed to monitor groundwater in the acid washing area and submit data to DEQ for the following semi-annual monitoring periods:
 - a. July through December 2017;
 - b. January through June 2018;
 - c. January through June 2019;
 - d. July through December 2019;
 - e. January through June 2020;
 - f. July through December 2020;
 - g. January through June 2021;

- h. July through December 2021; and
 - i. January through June 2022.
- 14. Part I.A.3 of the Individual Permit requires Smith-Midland Corporation to monitor groundwater in the acid washing area for Monitoring Wells MW-BG and MW-3 or those groundwater monitoring wells indicated as part of the monitoring network by a revised Groundwater Monitoring Plan for Static Water Level, pH, Total Dissolved Solids, and Specific Conductance a minimum of once every six months, and Part II.C.1 of the Individual Permit states: "The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to: Department of Environmental Quality - Northern Regional Office (DEQ-NRO) 13901 Crown Court Woodbridge, VA 22193."
- 15. The Department has issued no permits or certificates to Smith-Midland Corporation for the Facility other than VPDES Permit No. VA0084298 and VPDES Concrete General Permit Registration No. VAG110298.
- 16. Licking Run and the unnamed tributaries of Licking Run that receive discharges from the Facility are each a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.
- 17. Va. Code § 62.1-44.5 states that: "[E]xcept in compliance with a certificate issued by the Department, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances."
- 18. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Department, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
- 19. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.
- 20. On March 9, 2022, the Department issued NOV No. W2022-02-N-0002 to Smith-Midland Corporation regarding the Concrete Permit.
- 21. The Department issued the following NOVs to Smith-Midland Corporation regarding the Individual Permit:
 - a. NOV No. W2022-10-N-0018 on November 9, 2022;
 - b. NOV No. W2023-02-N-0002 on February 23, 2023; and
 - c. NOV No. W2023-03-N-0007 on March 23, 2023.
- 22. Smith-Midland Corporation and DEQ had the following correspondence regarding the issued NOVs:

- a. On March 16, 2022, Smith-Midland Corporation submitted a written response to DEQ for the March 2022 NOV.
 - b. On December 1, 2022, Smith-Midland Corporation submitted a written response to DEQ for the November 2022 NOV.
 - c. DEQ staff and representatives of Smith-Midland Corporation further discussed the March 2022 and December 2022 NOVs on conference calls on December 7 and 13, 2022.
 - d. On March 8, 2023, Smith-Midland Corporation submitted a written response to DEQ for the February 2023 NOV.
 - e. On March 9, 2023, DEQ and Smith-Midland Corporation had a meeting at DEQ-NRO.
 - f. On March 28, 2023, Smith-Midland Corporation submitted a written response to DEQ for the March 2023 NOV.
23. Based on DMR submissions by Smith-Midland Corporation, the NOVs issued by DEQ to Smith-Midland Corporation, the NOV responses submitted by Smith-Midland Corporation, the conference calls held in December 2022 between DEQ and Smith-Midland Corporation, the in-person meeting held at DEQ-NRO in March 2023, and related correspondence between DEQ and representatives of Smith-Midland Corporation, the Department concludes that Smith-Midland Corporation has violated 9VAC25-31-50, Parts I.A.1.a, I.A.3 and II.C.1 of the Individual Permit, and Parts I.A.2 and III.C.1 of the Concrete Permit, by discharging wastewater and stormwater associated with industrial activity from the Facility while concurrently failing to comply with the conditions of the Individual Permit and the Concrete Permit, as described above.
24. DEQ received the following submissions from adequately Smith-Midland Corporation that adequately demonstrate a return to compliance with the Individual Permit and Concrete Permit regarding the violations cited in this Order:
 - a. On January 11, 2023, DEQ received completed stormwater DMRs for the Facility's outfalls for the 2022 annual stormwater monitoring period as required by the Concrete Permit.
 - b. On January 9, 2023, DEQ received completed groundwater monitoring data for the Facility for the July through December 2022 groundwater monitoring period as required by the Individual Permit.
 - c. On March 9, 2023, DEQ received completed DMRs for the February 2023 monitoring period as required by the Individual Permit, and data was reported for all parameters specified in the Individual Permit and no exceedance of permitted limits was reported.
 - d. On April 7, 2023, DEQ received completed DMRs for the March 2023 monitoring period as required by the Individual Permit, and data was reported for all parameters specified in the Individual Permit and no exceedance of permitted limits was reported.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Department orders Smith-Midland Corporation, and the Smith-Midland Corporation agrees to:

1. Pay a civil charge of **\$14,482.75** (\$10,930.25 for violations of VPDES Individual Permit VA0084298 and \$3,552.50 for violations of VPDES Concrete Permit Registration No. VAG110298) in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
Within 30 days of execution of Order	\$3,620.69 or balance
Within 120 days of execution of Order	\$3,620.69 or balance
Within 210 days of execution of Order	\$3,620.69 or balance
Within 300 days of execution of Order	\$3,620.68

2. If the Department fails to receive a civil charge payment pursuant to the schedule described above, the payment shall be deemed late. If any payment is late by 30 days or more, the entire remaining balance of the civil charge shall become immediately due and owing under this Order, and the Department may demand in writing full payment by Smith-Midland. Within 15 days of receipt of such letter, Smith-Midland shall pay the remaining balance of the civil charge. Any acceptance by the Department of a late payment or of any payment of less than the remaining balance shall not act as a waiver of the acceleration of the remaining balance under this Order.
3. All payments shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

4. Smith-Midland Corporation shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Smith-Midland Corporation shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Department may modify, rewrite, or amend this Order with the consent of Smith-Midland Corporation for good cause shown by Smith-Midland Corporation, or on its own

motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.

2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. W2022-02-N-0002 dated March 9, 2022, NOV No. W2022-10-N-0018 dated November 9, 2022, NOV No. W2023-02-N-0002 dated February 23, 2023, and NOV No. W2023-03-N-0007 dated March 23, 2023. This Order shall not preclude the Department or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Smith-Midland Corporation admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Smith-Midland Corporation consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Smith-Midland Corporation declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Department to modify, rewrite, amend, or enforce this Order.
6. Failure by Smith-Midland Corporation to comply with any of the terms of this Order shall constitute a violation of an order of the Department. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Department or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Smith-Midland Corporation shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Smith-Midland Corporation shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Smith-Midland Corporation shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have

occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Smith-Midland Corporation. Nevertheless, Smith-Midland Corporation agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Smith-Midland Corporation has completed all of the requirements of the Order;
 - b. Smith-Midland Corporation petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Department terminates the Order in his or its sole discretion upon 30 days' written notice to Smith-Midland Corporation.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Smith-Midland Corporation from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Smith-Midland Corporation and approved by the Department pursuant to this Order are

incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.


13. The undersigned representative of Smith-Midland Corporation certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Smith-Midland Corporation to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Smith-Midland Corporation.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Smith-Midland Corporation voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2023.

Richard C. Doucette, CPG, Regional Director
Department of Environmental Quality

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Smith-Midland Corporation voluntarily agrees to the issuance of this Order.

Date: 5/22/23 By: , President & CEO
(Person) (Title)
Smith-Midland Corporation

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